Supreme Court, U.S.
FILED
OCT 18 2006
OFFICE OF THE CLERK

No. (1) 06-555

In The

Supreme Court of the United States

Citizen Robert Jay Rowen,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Citizen Robert Jay Rowen
321 S. Main St. #537
Sebastopol, California [95472]
707-578-7787

QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding as insubstantial that failure to apply the Rules of Court (FRCP) to the RESPONDENT/PLAINTIFF (**RES**) did not constitute violations of Due Process and Equal Protection?

2. With no opposition to PETITIONER/DEFENDANT (**PET**) ANSWER, AFFIRMATIVE DEFENSES AND SPECIFIC NEGATIVE AVERMENTS, did the district court err when it (Sua Sponte and ex parte) raised its own separate and distinct issue (the value of the Lawful gold coin), which was not raised by either party to the action, which issue prejudiced the (PET) and benefited the RES and by which this issue created a controversy between the enumerated powers of Congress under Art. I, § 8, Cl. 3 to that of Art. I, § 8, Cl. 5, and which constitutional controversy was sanctioned by the court of appeals? (Supreme Court Rule 10(a) lines 7-8).

3. Did the circuit court err in sustaining that the district court either nullified, or in the alternative expanded upon, the delegated enumerated power of Congress to coin money and regulate the value thereof, when the district court determined that PET, after lodging the coin into the accounts of the court for payment, did not provide the "monetary value of the coin, ***if any***," (emphasis added) thereby denying the coin as actual payment, and as a substantial issue, constituting accord and satisfaction in the instant case?

CITATIONS

Ninth Circuit Opinion whose review is sought is reproduced in the Appendix at A 1-2. The District Court opinions are reproduced in A 3-11.

JURISDICTION

Jurisdiction: 28 U.S.C. 1254(1). Petition is filed within 90 days of the denial for Panel Rehearing by the Ninth Circuit (A 14).

CONSTITUTIONAL ARTICLES AND STATUTES INVOLVED

U.S. Constitution Article I Section 8 Clause 3: *Congress shall have the power to regulate commerce. . . .*

U.S. Constitution Article I Section 8 Clause 5: *Congress shall have the power to coin money and regulate the value thereof.*

California Constitution Article I Section 1: *All people are by nature free and independent and have* ***inalienable*** *rights.*

Mint Act of 1792 (Coinage Act) (PL 2-16, 1 Stat. 246) (A 54).

HISTORY OF PROCEEDING

RES initiated case to reduce tax assessments to judgment. PET filed a Petition for Writ of Prohibition challenging jurisdiction. The Ninth Circuit denied Writ. Having no pleadings in opposition filed, the USDC entered a default against PET. PET timely remitted Lawful tender into USDC accounts alleging payment in full. No opposition pleading filed by RES. The court vacated the default and ordered a formal written answer. PET timely filed response. This Court is referred to 5th affirmative defense in its entirety and motion to dismiss (A 38-41), which also included proof that the manner of payment (via USDC's

account) was proper within the USDC. No opposition pleading filed by RES. In orals, PET moved the court to dismiss under FRCP 8(d), PET citing no oppositional pleading filed to averments (A 52-53). Motion denied. Transcript of oral hearing (A 53, ¶ 10-11), in addition to docket, evidences "No oppositional pleading filed by RES." The docket (A 55-62) evidences **NO OPPOSITIONAL PLEADINGS** filed by RES to any of PET's pleadings in court records. The court, via Sua Sponte and ex parte, asked RES "Does the government have any position on the value [of the coin]"? (A 53) (See question 2 above). RES responded, "It's . . . face value of the coin itself."

The court ordered a supplemental briefing from RES on the amount of the alleged debt. PET responded alleging undisputed payment, and with the value of the coin as being numerically branded upon it by Congress (Mint Act). PET referenced his 10th affirmative defense (A 42-51) that it did not carry any hidden liens by mere maritime hypothecation (FRCP XIII Rule C, notes subd.(1), 1(e) (suits founded upon mere maritime hypothecation) (A 51), that it constituted the actual commodity (gold) of money (actual payment), which does not fall under the Uniform Commercial Code [UCC] (source Art. I, § 8, Cl. 3).

The court's ruling on 5/11/2004 included a footnote alleging that the lodging of the coin with the court rather than the RES was "problematic", and that "Rowen has not provided any information from which the Court may determine the monetary value, ***if any,*** of the coin. (Emphasis added, under Art. I, § 8, Cl. 3, and **NOT** under Art. I, § 8, Cl. 5).

PET motioned for reconsideration based on RES's violation of FRCP 8(d). (A 21-30). Motion was denied. (A 12-13) Appeal filed, Ninth circuit; summarily affirmed, stating issues raised are "insubstantial." Motion for Panel Rehearing for violations of Fundamental Principles (A 15-20). Denied (A 14).

REASONS FOR GRANTING WRIT OF CERTIORARI

This court has both a Constitutional and self-imposed mandate (*EX PARTE YOUNG*, 209 U.S. 123 (1908)) to grant Writ: "*We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.*" PET believes that all 3 questions arise upon Fundamental Rights and Principles, and #2 and #3 are of first impression to this Court.

PET believes that the decisions in this matter violate and overturn Fundamental principles regarding due process, equal protection, money and payment, and raising an issue of controversy between Const. Art. I, § 8, Cl. 3 and Art. I, § 8, Cl. 5. Failure filing oppositional pleadings by RES to any of the pleadings of PET raised the application of FRCP Rule 8(d) (A 55-62). The court, via Sua Sponte, erred by raising a new issue [value of coin] under ex parte with RES, when RES filed no oppositional pleading to PET's pleadings.

1. As seen in A 21-30, it is evident that the application of the rules of court were not applied to the court or to RES [no oppositional pleadings filed]. This violates equal protection of the law, and an impartial adjudicator, besides violating the Fundamental Constitutional principles of due process.

2. As is clearly evidenced on transcript (A 53 ¶ 8) of oral argument, the court **acknowledged** the coin as a ***substantial*** issue. As is evident in its determination, the USDC rendered the coin valueless so as to void the substantial issue of accord and satisfaction, and denying PET the remedy of actual payment. The court, via Sua Sponte, raised the Constitutional controversy between Art. I, § 8, Cl. 3 [UCC] and Art. I, § 8, Cl. 5 [actual payment] to invalidate PET's substantial issue (which controversy was sanctioned by appellate court). The laws determining the value of the coin are the same today as in the Mint Act – 5 dollars gold weight valued by the Congress constituting a Lawful tender. It is neither the Judicial nor Executive

Branch, but the Congress that values the coin lodged in payment. Therefore, accord and satisfaction has been met under the delegation of power to the Congress, and the case should be dismissed.

3. In the instant case, the USDC judge ordered Sua Sponte return (A 10 ¶ 2) of the coin to the judgment debtor (PET) that PET surrendered to RES. Writ should issue *reversing* this *new* judicially implied holding that ***Lawful money is invisible*** **to the government** in the payment of debt, in violation of Fundamental Principle, Art. I, § 8, Cl. 5, which denied the Fundamental Rights of PET (sanctioned by appellate court). The court effectively determined no value to the coin (A 10, footnote). Hence, had the PET placed 5,000 Lawful tender coins into the account of the United States, they too would have been returned (A 29 ¶ 3). It follows from the determination that the number of Lawful tender coins is irrelevant. The court's determination that Lawful tender is valueless in payment of debts/obligations, and liabilities, not only denies the substantial issue [accord and satisfaction], but more importantly it ***nullifies*** an enumerated power (Art. I, § 8, Cl. 5) of Congress.

CONCLUSION

It is evident that Lawful tender cannot be annulled by the USDC, yet, the USDC clearly has nullified Art. I, § 5, Cl. 8, an enumerated power of Congress, when the court's manifest duty and obligation is to uphold the Supreme Law. The docket (A 55-62) evidences violations of due process and equal protection, the court moving against PET each step of the procedures without filings in opposition by RES, [***See***. FRCP rule 8(d): averments admitted when not denied.]

Considering that the current commercial jurisdiction under Art. I, [illegible], Cl. 3 deals exclusively in ***form*** [UCC], based on cred[illegible]ebit, and Art. I, § 8, Cl. 5 deals with both ***form and substance*** (gold/silver) based on fixed value commodity [Lawful tender], that there is a controversy raised by the USDC between the relations of these two clauses, in that there could never be a certainty of a fixed relation between the two. Law is based on reason and is not arbitrary. The USDC imposed an arbitrary commercial value (Art. I, § 8, Cl. 3) (or zero value) upon the coin. If the law fixes the value today (Art. I, § 8, Cl. 5), that value must remain steadfast thereafter [Fundamental Principle]. The court acting beyond the scope of its Constitutional Authority has annulled Art. I (§ 8, Cl. 5) in the instant matter, and applied (Art. I, § 8, Cl. 3), which violated PET's Fundamental Rights under due process, and Fundamental Principles.

The Motion for Reconsideration (A 21-30) is included in its entirety as evidence of no oppositional filings by RES, and the court's violations of equal protection to PET. The Writ must be granted to address these Constitutional questions, issues of Fundamental Principles and Rights, and usurping "*that [jurisdiction] which is not given.*" Appellate determination, sanctioning and affirming the preceding controversies, and which violate the Calif. Constitution's (Art. I, § 1) declaration of PET's inalienable rights (including the Right to Lawful tender in payment of debt), must be reversed. Will this Court acknowledge the coin, and hence, raise Law under Art. I, § 8, Cl. 5 over Art. I, § 8, Cl. 3?

Respectfully submitted,

Citizen Robert Jay Rowen
321 S. Main St. #537
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ROBERT J. ROWEN, Defendant-Appellant.	No. 05-16532 D.C. No. CV-03-03614-JSW MEMORANDUM* (Filed Jan. 27, 2006)

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted January 23, 2006**

Before: T.G. NELSON, SILVERMAN and BYBEE, Circuit Judges.

We have reviewed appellant's opposition to the motion for summary affirmance and appellant's opening brief. The motion for summary affirmance is granted because the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant's alternative "motion for more definite statement and/or motion to strike" is denied.

The district court's judgment is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT J. ROWEN, Defendant.	No. C 03-3614JSW **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

(Filed May 11, 2005)

Now before the Court is the motion for summary judgment filed by plaintiff United States of America ("United States"). Having carefully reviewed the parties' papers and considered their arguments and the relevant legal authority, the Court hereby GRANTS plaintiff's motion for summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On April 17, 1997, the United States indicted defendant Robert Rowen ("Rowen") on four counts of false claims in violation of 18 U.S.C. § 287 and one count of a corrupt endeavor to impede the collection of taxes in violation of 26 U.S.C. § 7212(a). (Declaration of Keith S. Blair in Support of Plaintiff's Motion for Summary Judgment ("Blair Decl."), Ex. A.) On June 25, 1997, Rowen pled guilty to engaging in a corrupt endeavor to impede the administration of the internal revenue laws. (*Id.*, Ex. B.) The plea agreement required Rowen to file accurate federal income tax returns for the years 1992 through 1997. (*Id.*, Ex. D.)

In 2001, Rowen sought bankruptcy protection in the United States Bankruptcy Court for the District of Alaska. *Rowen v. United States*, 298 B.R. 641 (Banker. D. Ala. 2003). During the course of the bankruptcy case, Rowen commenced an adversary proceeding seeking to discharge his federal income tax liability for the years 1992 through 1997. (*Id.*) The United States opposed the discharge on the ground that Rowen willfully attempted to evade the taxes for those years. (*Id.*) On May 5, 2003, the bankruptcy court held that Rowan's federal income tax liability for the years 1992 through 1997 was excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(C). (Blair Decl., Ex. B.)

The United States then filed this action against Rowen to reduce to Judgment the IRS's tax assessments against Rowen for the years 1992 through 1997, and is now moving for summary judgment. In support of its motion, the United States submitted Certificates of Assessments and Payments ("Form 4340s") as proof of Rowen's tax liabilities for the years 1992 through 1997. (Blair Decl., Ex. D.) In response, Rowen filed a document entitled "Answer, Affirmative Defenses and Specific Negative Averments to Plaintiff's Motion for Summary Judgment." On February 5, 2004, Rowen filed a Notice of Remittance with the Court, lodging a "coin of the realm," which he contends extinguishes his debt to the United Stares. Rowen did not submit any evidence in opposition to the United States' motion.

The United States did not file any response to Rowen's notice or otherwise address the implications of Rowen's filing of the "coin of the realm." At the hearing on this motion held on September 1, 2004, Rowen admitted that he has not made any payments toward his tax liability for these years, other than lodging this coin with the Court.

In September 2004, the Court ordered supplemental briefing, requiring the United States to submit additional evidence regarding Rowen's tax liability and the method used to calculate interest and penalties. The United States filed a supplemental memorandum and the supporting evidence requested by the Court, demonstrating that Rowen's outstanding in liabilities, including interest and statutory accruals, amounted to $1,124,800.90 as of October 5, 2004. (Declaration of Keith S. Blair filed on October 5, 2004 ("Suppl. Blair Decl."), Exs. A, B; Declaration of John Margenau filed on October 5, 2004 ("Margenau Decl."), ¶¶ 3-4, Ex. A.) The breakdown of Rowen's tax liabilities, including penalties and interest, are as follows: For the tax year ending December 31, 1992, Rowen owes a total of $101,043.42, which includes $30,835.00 in assessed taxes, $14,449.72 in penalties, and $55,758.70 in interest. (Margenau Decl, Ex. A at 1-3.) For the tax year ending December 31, 1993, Rowen owes a total of $257,026.25, which includes $27,120.00 in assessed taxes, $98,445.30 in penalties, and $131,460.95 in interest. (*Id.*, Ex. A at 4-6) For the tax year ending December 31, 1994, Rowen owes a total of $254,323.57, which includes $33,116.00 in assessed taxes, $100,910.30 in penalties, and $120,297.27 in interest. (*Id.*, Ex. A at 7-9.) For the tax year ending December 31, 1995, Rowen owes a total of $260,948.84, which includes $25,112.00 in assessed taxes, $125,402.30 in penalties, and $110,434.54 in interest. (*Id.*, Ex. A at 10-12.) For the tax year ending December 31, 1996, Rowen owes a total of $186,911.39, which includes $29,744.00 in assessed taxes, $87,694.48 in penalties, and $69,472.91 in interest, (*Id.*, Ex. A at 13-15.) For the tax year ending December 31, 1997, Rowen owes a total of $64,547.43, which includes $33,115.00 in assessed taxes;

$11,358.75 in penalties, and $20,073.68 in interest. (*Id.*, Ex. A at 16-19.)

Rowen filed a response to United States' supplemental filing, but again, did not submit any evidence.

DISCUSSION

I. Legal Standard.

Summary judgment is proper when the "pleadings, depositions, answers and interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). A fact is "material" if the fact may affect the outcome of the case. *Id.* at 248. "In considering a motion for summary judgment, the court may not weigh the evidence or make credibility determinations and is required to draw all inferences in a light most favorable to the non-moving party." *Freeman v. Arpaio*, 125 F.3d 723, 735 (9th Cir. 1997).

When the party moving for summary judgment bears the burden of proof at trial, they must produce evidence that would entitle him or her to a directed verdict if the evidence went uncontroverted at trial. *C.A.R. Transp. Brokerage Co., Inc. v. Darden*, 213 F.3d 474, 480 (9th Cir. 2000). Once the moving party meets his or her initial burden, the non-moving party must go beyond the pleadings and set forth specific facts supported by admissible evidence showing that there is a genuine issue for trial.

Fed R. Civ. P. 56(e); *see also Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). In opposing summary judgment, the non-moving party is not entitled to rely on mere allegations or suppositions without properly submitting supporting evidence. Fed. R. Civ. P. 56(e); *see also S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines) v. Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that "a party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda"). Rather, the non-moving party must "identify with reasonable particularity the evidence that precludes summary judgment." Fed. R. Civ. P. 56(e). It is not the Court's task to "scour the record in search of a genuine issue of triable fact." *Keenan*, 91 F. 3d at 1279 (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995). If the non-moving party fails to make this showing, the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Cattrett*, 477 US. 317, 323 (1986).

II. United States' Motion for Summary Judgment.

The United States moves for summary judgment, arguing that the government has met its burden of proof with respect to Rowen's tax liability, penalties and interest, and that Rowen failed to set forth the requisite specific facts demonstrating that there is a genuine issue for trial. Rowen asserts that his tender of the "coin of the realm" to the Court extinguished his tax debt to the United States.

In an action brought to collect federal taxes, the government bears the initial burden of proof. *Palmer v. Internal Revenue Service*, 116 F.3d 1309, 1312 (9th Cir. 1997). That burden can be satisfied through proof of the

tax assessments, which are entitled to a presumption of correctness so long as they are supported by minimal factual foundation. *Id.; United States v. Stonehill*, 702 F.2d 1288, 1293 (9th Cir. 1983). Form 4340s are "routinely used to prove that tax liability assessment[s] have in fact been made," *Geiselman v. United States*, 961 F.2d 1, 6 (1st Cir. 1992), and are presumptive proof of a valid assessment. *Huff v. United States*, 10 F.3d 1440, 1445 (9th Cir. 1993). Form 4340s are highly probative and, in the absence of contrary evidence, are sufficient to establish that an assessment was properly made and that notices and demand for payment were sent. *Hughes v. United States*, 953 F.2d 531, 535 (9th Cir. 1992).

Tax assessments accrue interest and penalties until they are paid in full. 26 U.S.C. §§ 6601(a) and 6651(a). Interest on unpaid taxes accrues pursuant to 26 U.S.C. § 6601(a), which provides: "if any amount of tax . . . is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid." The formula used to establish the rate of interest is set forth in 26 U.S.C. § 6621, and the actual rates are published in Revenue Rulings, the most recent being Revenue Ruling 2004-92. (*See* Suppl. Blair Decl., Ex. B.)

Penalties for failure to file returns and pay taxes due shall be added to the amount of taxes due. 26 U.S.C. § 6651(a). The imposition of penalties is mandatory, unless the individual can demonstrate that his failure to file returns was "due to reasonable cause and not due to willful neglect." *United States v. Boyle*, 469 U.S. 241, 245 (1985).

Here, the United States carried its initial burden of proof by submitting Rowen's tax returns and the corresponding Form 4340s for each year in question. The Form 4340s reflects the total tax assessment for each year, including penalties and interest through May 5, 2003. (Blair Decl., Ex. D.) In response to the Court's request for supplemental briefing, the United States submitted updated calculations that reflect Rowen's total tax liabilities, including penalties and interest, as of October 5, 2004. (Margenau Decl., Ex. A) The United States also submitted. evidence regarding rate of interest charged and assessment of penalties. (Suppl. Blair Decl., Ex. B; Margenau. Decl., ¶¶ 3-4, Ex. A.) Rowen did not submit any evidence in opposition to the United States' motion. Therefore, the Forms 4340 submitted by the United States are sufficient to establish Rowen's tax liability. *See Huff*, 10 F.3d at 1445.

Because the United States satisfied its initial burden of proof, the burden then shifts to Rowen to go beyond the pleadings and set forth specific facts, *supported by admissible evidence,* showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e) (emphasis added). As noted above, Rowen failed to submit any evidence in opposition. Moreover, Rowen has not challenged the United States' position that he is liable for his taxes for the years 1992 through 1997. Nor has he challenged the amount of the tax assessments, interest or penalties asserted by the United States. Instead, Rowen relies solely on his assertion that he tendered the "coin of the realm," and argues that his lodging this coin with the Court extinguished all his alleged obligations to the United States. (Rowen's Response to Plaintiff's Supplemental Memorandum in Support of Summary Judgment at 3.) However, mere

assertions in legal memoranda, absent supporting evidence, are insufficient to create a genuine issue of triable fact.[1] *Varig Airlines*, 690 F.2d at 1718. Because the United States satisfied its initial burden regarding the amount of Rowen's tax liabilities, and because Rowen failed to go beyond the pleadings and submit *any* evidence in opposition, the United States is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, the Court GRANTS the United States' motion for summary judgment. The Clerk of Court is directed to return the "coin of the realm" to Rowen, and to close the file.

IS SO ORDERED.

Dated: May 11, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES
DISTRICT JUDGE

[1] Rowen's reliance on his lodging of the "coin of the realm" is problematic for the additional reasons that he lodged this coin with the Court, rather than paying it directly to the plaintiff United States, and Rowen has not provided any information from which the Court may determine the monetary value, if any, of the coin.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT J. ROWEN, Defendant.	No. C03-3614JSW **JUDGMENT** (Filed May 11, 2005)

Pursuant to the Courts Order Granting the motion for summary judgment filed by plaintiff United States of America ("United States"), judgment is hereby entered in favor of the United States and against defendant Robert Rowen ("Rowen") in the amount of $1,124,800.90. This amount reflects Rowen's outstanding tax liabilities, including interest and statutory accruals, as of October 5, 2004. Became the tax assessments continue to accrue interest and penalties until Rowen pays them in full, this judgment does not reflect the total amount Rowen owes to the United States based on his tax liability for the years 1992 through 1997.

IT IS SO ORDERED.

Dated: May 11, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ROBERT J. ROWEN, Defendant.	No. C 03-3614 JSW **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

(Filed Jul. 15, 2005)

Now before the Court is the motion for reconsideration filed by Defendant Robert J. Rowen.[1] Defendant requests reconsideration of the Court order issued on May 11, 2005 granting plaintiff United States of America ("United States") motion for summary judgment. Having carefully reviewed Defendant's papers and considered the relevant legal authority, and good cause appearing, the Court hereby DENIES Defendant's motion for reconsideration.

Defendant has not demonstrated that there is a material difference in fact or law which should alter the analysis of this Court's May 11, 2005 Order granting the United States' motion for summary judgment. Civil L.R. 7-9(b)(3). Similarly, Defendant has not demonstrated the emergence of new material facts or a change in law occurring after the time of the Court's order. Civil L.R. 7-9(b)(2).

[1] Although Defendant should have moved the Court for leave to file a motion for reconsideration, because Defendant appears pro se, the Court will overlook this strict procedural requirement. Civil L.R. 7-9(a).

Lastly, Defendant has not offered any evidence of "manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court" Civil L.R. 7-9(b)(3). Instead, Defendant simply reargues his opposition to the United States's motion. This is not a proper basis for reconsideration. Therefore, the Court DENIES Defendant's motion for reconsideration.

IT IS SO ORDERED.

Dated: JUL 15 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ROBERT J. ROWEN, Defendant-Appellant.	No. 05-16532 D.C. No. CV-03-03614-JSW Northern California (San Francisco) **ORDER** (Filed Aug. 1, 2006)

Before: T.G. NELSON, SILVERMAN and BYBEE, Circuit Judges.

Judges T.G. Nelson, Silverman and Bybee vote to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are **DENIED**.

There shall be no further filings accepted in this closed case.

No. 05-16532

In The United States Court of Appeals
FOR THE NINTH CIRCUIT

ROBERT J. ROWEN,

Defendant-Appellant

V.S.

UNITED STATES OF AMERICA,

Plaintiff-Appellee

ON APPEAL FROM THE ORDER OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
THE HONORABLE JUDGE JEFFREY S. WHITE
DISTRICT COURT DOCKET C-03-3614 JSW

APPELLANT'S MOTION TO RECONSIDER EN BANC

Robert Jay Rowen, Appellant pro se
7048 E. Hurlbut Ave
Sebastopol, California [95472]

Statement of Jurisdiction

1. The order of judgment appealed from is final or otherwise appealable pursuant to 28 U.S.C. §1291 and §1294; and

2. The Judgment of the United States District Judge Jeffrey S. White was signed, stamped entered and served May 11, 2005 by the Clerk, U.S. District Court, Jennifer Ottolini Deputy Clerk; and

3. Defendant timely filed a "Motion for Reconsideration" filed May 23, 2005 and Entered May 25, 2005; and

4. The final order of the United States District Court for the Northern District of California was filed on July 14, 2005 and entered July 18, 2005 by United States District Court Judge Jeffrey S. White; and

5. A timely Notice of Appeal was filed. (see Notice of Appeal attached)

6. The United States Court of Appeals for the Ninth Circuit entered a Memorandum Affirming the lower court decision on January 27, 2006.

7. A timely Petition for Rehearing En Banc is filed under FRAP 35, Circuit Rule 35

Statement of Issues

1. Petitioner files this motion for rehearing *en banc* on the basis that this proceeding involves a question of exceptional importance to wit:

   a) The use of *United States v. Hooten,* 693 F.2d 857, 858 (9th Cir. 1982) applying the *insubstantial* test to this case creates a question as to which laws apply to Appellant and which apply to United States and/or If the United States can

tell the court in oral argument that it **determined** an issue as *frivolous* and therefore ignore court procedure at will.

ISSUE

The ruling in this case by Circuit Judges Nelson, Silverman and Bybee applies the *insubstantial* test where a genuine issue of material fact remained; was Appellant entitled to a default judgment or ruling on the matter of payment prior to ruling on Summary Judgment. The trial court allowed the United States to assert a position of superiority not provided in the Federal Rules of Civil Procedure, i.e., refuse to respond to a properly filed and served matter. The United States *defaulted* on it's duty to respond or affirmatively defend to a *Notice of Remittance*, which if performed by other than the government would have at least generated an order to comply, default judgment or at worst a sanction along with the default judgment. The United States called the issue frivolous, the court did not. This Court calls the matter insubstantial as though the issue of actual payment of the alleged liability and/or default on the matter would not have altered the ultimate end. Appellant shows the court the value offered is not relevant because the lower court made no ruling thereon, rather it ignored the issue of the governments violation of the procedural rules.

Given both the United States District Court and these Honorable Judges seem to agree that the standard of procedural rule is different or inapplicable to the United States, Appellant is left in a position of not knowing which rules, laws, and administrative policies apply, when and to whom.

Appellant firmly believes that the question is of exceptional importance to warrant an *en banc* review on the basis that had this action gone to a reasonable jury he could have prevailed.

Conclusion

Appellant deserves an *en banc* review to determine the rules and law that applies to him and the government and when.

Prayer

Wherefore, defendant respectfully requests this court to review *en banc* to determine the matters provided herein as they relate directly to the review judges decision.

Statement of Related Cases

Defendant is aware of Robert J. Rowen v. United States of America C-05-3766 MMC a copy of which (Exhibit A) is included herein.

Statement of Non-Oral Argument

Appellant waives the right to provide oral argument and wishes this action to proceed on the written appeal, and record.

Respectfully Submitted this 6th day of March, 2006

/s/ [Illegible]
Robert J. Rowen

App. 19

No. 05-16532

In The United States Court of Appeals
FOR THE NINTH CIRCUIT

ROBERT J.ROWEN,

Defendant-Appellant

V.S.

UNITED STATES OF AMERICA,

Plaintiff-Appellee

ON APPEAL FROM THE ORDER OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
THE HONORABLE JUDGE JEFFREY S. WHITE
DISTRICT COURT DOCKET C-03-3614 JSW

DEFENDANT-APPELLANT AFFIDAVIT

I, Robert J. Rowen being of legal age, sound mind and competent to give testimony, having first hand knowledge, do depose and state the following under penalty of perjury according to the laws of the United States (28 USC §1746) that the following is true, correct and complete to the best of my knowledge, recollection, understanding and belief:

1. I, Robert J. Rowen, declare that I make this petition for rehearing *en banc* in good faith and for the purposes stated herein.

2. I, Robert J. Rowen, declare that I genuinely believe that had this matter been placed before a reasonable jury I could have prevailed;

3. I, Robert J. Rowen, declare that I have received no notice that the United States is not held accountable to the Federal Rules of Civil Procedure in the same manner as I.

FURTHER THE AFFIANT SAITH NAUGHT:

Dated this date: 6th March 2006

/s/ [Illegible]
Robert J. Rowen, *pro se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA, Plaintiff, vs. Citizen, Robert J. Rowen, Defendant.	Case No. C03-03614 JSW DEFENDANT'S MOTION FOR RECONSIDERATION FRCP 59(b)

The defendant believes that the court in this matter erred and violated the defendant's substantive rights when it granted the plaintiff's summary judgment filed May 11, 2005. The defendant claims that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); see also Keeman v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). Summary judgment as a matter of law is proper where "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party." Fed. R. Civ. Proc. 50(a)(1). Further, "we view the entire trial record in the light most favorable to the **non-movant**, drawing reasonable inferences in its favor." *Burch v. Coca-Cola Co.,* 119 F.3d 305, 313 (5th Cir. 1997).

The defendant has been un-waiving in his claim that the plaintiff has been paid in full in this matter. The 5th Circuit implements *Boeing Co. v. Shipman,* 411 F.2d 365 (5th Cir. 1969) (en banc), and the district courts of the state of LA implement *Gautreaux v. Scurlock Marine, Inc.,* 107 F.3d 331, 336-38 (5th Cir. 1997) (en banc), **to test the sufficiency of evidence.** Under *Boeing,*

> t[here must be a conflict in substantial evidence to create a jury question." 411 F.2d at 375. Substantial evidence is "evidence of such quality and weight that reasonable and fair-minded men in

> the exercise of impartial judgment might reach different conclusions." *Id.* at 374; see also *Krystek v. University of Southern Mississippi,* 164 F.3d 251, 255 (5th Cir. 1999).

On February 5, 2004, the defendant filed a Notice of Remittance with the Clerk of the Court to fund the account of the United States [plaintiff] for the full payment of any and all alleged debts, taxes, obligations, liabilities or otherwise. The funding of the account of the United States with lawful tender in full payment of the plaintiff's claim is ***a material issue of fact;*** it is ***a genuine issue to preclude summary judgment. Keehn v. Brady Transfer & Storage Co., C.C.A. Ill.,*** 159 F.2d 383, 385. The United States was promptly notified [See the record for the filed Proof of Service of Notice of Remittance]. The United States did not object nor deny nor respond to the claim of the defendant in the Notice of Remittance, which clearly declared that lawful tender has paid in full payment the claim of the plaintiff. Six months later, on August 6, 2004, the defendant filed his Answer, Affirmative Defenses and Specific Negative Averments to Plaintiff's Motion for Summary Judgment. Within the defendant's 5th Affirmative Defense, the defendant claims payment in full of plaintiff's alleged claim, which is a second clear opportunity for the plaintiff to object or deny the defendant's claim. The plaintiff did not respond. On September 1, 2004, in oral argument, the plaintiff was given another opportunity to deny, and failed to respond to the defendant's claim. Neither have the further filings by the plaintiff raise opposition to the defendant's claim.

The defendant contends that the payment in full of the plaintiff's claim in this matter is not "mere allegations or suppositions without the support of evidence. Fed. R.

Civ. P. 56(e), see also S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines) v. Walter Kidde & Co., 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that "a party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda"). It is evident that the court clerk relied upon the Notice of Remittance and accepted the coin for the account of the United States.

From funding the United States' account with lawful tender in full payment and extinguishments of all alleged debt/obligations/liability to the date the court filed the order for summary judgment has been a total of fifteen months. One year and three months, and during the interim of this time span the plaintiff has not once denied the defendant's claim that the debt has been extinguished.

It is evident that the Plaintiff failed to take the legal steps that are necessary to protect its own interests by timely objecting/denying that the defendant tendered lawful tender for payment in full of the alleged debts/liabilities, and/or obligations it claims the defendant owed.

> **C.A.1 (Mass.) 2002** – "In United States' adversary system of justice, each litigant remains under an abiding duty to take the legal steps that are necessary to protect his or her own interests." *Karak v. Bursaw Oil Corp.*, 288 F.3d 15.
>
> **C.A.1 (Puerto Rico) 2003** – Each litigant remains under an abiding duty to take legal steps that are necessary to protect his or her own interests. – **Farm Credit Bank of Baltimore v. Ferrera-Goitia**, 316 F.3d 62.
>
> **C.A.8 (Mo.) 2002.** – "All civil litigants are required to follow applicable procedural rules."

> ***Meehan v. United Consumers Club Franchising Corp.***, 312 F.3d 909.
>
> **E.D.Mich. 1996.** – "Parties must comport with rules of procedure and are not allowed to proceed whimsically **without accepting consequences of their decisions.**" ***O'Neill w. Medad,*** 166 ***F.R.D.*** 19

However, the plaintiff is the United States, and the claim may be raised that it does not have to respond and follow the rules of court, nor address the claims of the defendant. Nonetheless, the Federal Rules of Civil Procedure provide that the government as a litigant is subject to all the rules as the defendant in this matter.

> **C.A.1 (Mass.) 1994.** – "Federal Rules of Civil Procedure apply to government as well as to all other litigants." Fed.Rules Civ.Proc.Rule 56(f), 28 U.S.C.A. ***Resolution Trust Corp. v. North Bridge Associates, Inc.,*** 22 F.33d 1198

The failure of the plaintiff to respond to the claims of the defendant by expressed or verbal objection/denial can be stated as the plaintiff acquiescesed [sic] to the defendant's claim. In clearer words, the plaintiff knew that it was entitled to impeach a transaction or enforce a right, neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right. *Norfolk & W. R. Co. v. Perdue*, 40 W. Va. 442, 21 S.E. 755. It may further be alleged by the defendant that the plaintiff in this matter is the subject of Estoppel by Acquiescence.

> Passive conduct on the part of one who has knowledge of the facts may be basis of estoppel. ***Winslow v. Burns,*** 47 N.M. 29, 132 P.2d 1048, 1050.

As previously stated, the plaintiff did not file a response to the defendant's affirmative defenses and specific negative averments, and yet the court in this matter granted the plaintiff summary judgment. The defendant contends that the court in this matter erred when it ***annulled*** FRCP Rule 8(d)

> **(d) Effect of Failure To Deny.**
>
> Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, ***are admitted*** when not denied in the responsive pleading.

The court may have determined that it did not have to apply Rule 8(d) in the instant matter, and thus, because the plaintiff is the federal government may have determine the construction of this rule inapplicable. The defendant does not know if this is the case, however, the defendant demanded that the rule be applied, and the record shall prove that it was not. This would definitely disfavor the non-movant, the defendant.

> Further, "we view the entire trial record in the light most favorable to the **non-movant**, drawing reasonable inferences in its favor." *Burch v. Coca-Cola Co.,* 119 F.3d 305, 313 (5th Cir. 1997).

But does the court have discretion to apply or not to apply the Federal Rules of Civil Procedures in this matter? In accordance with the Federal Rules Decisions, it is an "***affirmative duty***" for the court to exercise the FRCP.

> **N.D.Ill. 1997.** – "Federal Rules of Civil Procedure are not rules that district judge may opt to disregard." *Bardney v. U.S.,* 959 F.Supp. 515, affirmed 151 F.3d 1032

D.Mont. 1998 – "District Court has affirmative duty to exercise the procedural authority granted under the rules of civil procedure so as to ensure that civil litigation in the federal courts is resolved fairly and without undue costs or delay." ***Fed.Rules Civ. Proc. Rule 1,*** 28 U.S.C.A. *Frederick v. Unum Life Ins. Co. of America,* 180 ***F.R.D.*** 384

D.Mont. 1998 – "The Rules of Civil Procedure, the public interest and the interests of both parties to litigation, demand a seemly and efficient use of judicial resources to achieve the goals articulated in Rule 1." ***Fed-Rules Civ. Proc. Rule 1,*** 28 U.S.C.A. *Frederick v. Unum Life Ins. Co. of America,* 180 ***F.R.D.*** 384

". . ., strict adherence to procedural requirements specified by legislature is best guaranty of even-handed administration of the law." *Frarris v. U.S.,* 877 F.Supp. 1549

C.A.9 (Cal.) 2003. – "An "action" is the formal and ordinary means by which parties seek legal and/or equitable relief before a court of law through the filing of a formal complaint, triggering the full array of legal, procedural, and evidentiary rules governing the process by which a court adjudicates the merits of a dispute, and absent express statutory authorization stating otherwise, **there is no question that the Federal Rules of Civil Procedure govern all "actions" before the district courts** of the United States." – *S.E.C. v. McCarthy,* 322 F.3d 650.

N.D.Ill. 1989 – **"If a federal rule covers a situation, it must be applied if valid,** and it is valid if it regulates matters which, though falling within the uncertain area between substance and

> procedure, are rationally capable of classification as either." *Schmitz v. Campbell-Mithun, Inc.*, 124 ***F.RD.*** 189

But can the court apply judicial inventiveness so as to escape the application of the rule? In *Amchem Products, Inc. v. Windsor,* the **courts are not free to amend rule outside process Congress ordered.**

> **U.S.Pa. 1997** – "Federal rules take effect after extensive deliberative process involving many reviewers, and text of rule thus proposed and reviewed limits judicial inventiveness, as **courts are not free to amend rule outside process Congress ordered,** which is properly tuned to instruction of Rules Enabling Act that rules of procedure shall not abridge any substantive right." ***28 U.S.C.A § 2072(b)*** *Amchem Products, Inc. v. Windsor*, 117 S.Ct. 2231, 521 U.S. 591k, 138 L.Ed.2d 689.

The defendant has a legitimate claim based upon the violation of his substantive rights to pay debts. The defendant at all times declared that he paid the alleged liability/obligation owed to the plaintiff in full by ***lawful tender***. The plaintiff did not object nor deny that lawful tender was tendered in full payment of all debts/ obligations and liabilities owed the plaintiff in its claim. The defendant requested at oral hearing that the plaintiff's claim should be dismissed on this claim, and other motions before the court. ***Further, once the claim of the plaintiff had been paid in full, and the plaintiff did not object, the plaintiff did not have a legitimate claim against the defendant to continue the matter.*** In accordance with the defendant's motions, the case should have been dismissed for "failing to state a claim upon which relief may be granted." [12(b)(6) The court

erred by granting the plaintiff's summary judgment in violation of the defendant's substantive rights.

From the commencement of the complaint, the plaintiff has the initial ***burden of demonstrating that it has a legitimate claim against the defendant.*** That the defendant declares that the claim has been satisfied, and the plaintiff has not objected or denied the same during the proceedings of the case, it is an operation of law that the claim has been satisfied. **The court erred when it granted summary judgment for the plaintiff; the plaintiff had not demonstrated that it had a legitimate claim against the defendant after the plaintiff's claim was satisfied.** In addition, the plaintiff is compelled to respond to the defendant's averments/ counterclaims.

> **N.D.Ill 1992.** – "No responsive pleading to answer is allowed unless counterclaim is raised." *U.S. v. State Of Ill.,* 803 F.Supp. 1338

Moreover, concerning FRCP 8(d), it should be applied under its plain meaning.

> **C.A.9 (Idaho) 2002.** "As a rule of construction,– Federal Rules of Civil Procedure are given their plain meaning." *Kootenai Tribe of Idaho v. Veneman,* 313 F.3d 1094

Hence, in accordance with FRCP 8(d) the United State [sic], as plaintiff in this matter, has admitted all the material facts that the defendant has alleged in each of his filings, Motion to Quash, Writ of Prohibition, and Affirmative Defenses and Specific Negative Averments because in accordance with Rule 8(d), the USA has admitted for failure to deny by a responsive pleading.

(d) Effect of Failure To Deny.

> Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

Concerning the lawful tender, at oral argument the court raised the issue of the conversion of the coin to that of Federal Reserve Notes. The court asked the plaintiff, "What's the conversion between the coin and Federal Reserve Notes? The Plaintiff responded, "I think it's dollar for dollar?" The defendant objected and stated there is no conversion table. Simply stated, and referring to the argument that the Federal Reserve Note has no value other than the confidence of the American People [within defendant's affirmative defenses], which would the court prefer, Fifty-Thousand dollars in lawful tender, ***money of accounts*** of the United States under the weights and standards of the Mint Act of 1792, which has not been repealed, or in the alternative, Fifty-Thousand dollars in legal tender of Federal Reserve Notes, ***units of the account*** of the Federal Reserve Bank? If the response is the Federal Reserve Notes, then it would follow that one would accept a print of the Mona Lisa as authentic and valuable over the original. If the court takes the gold dollars, then it is clear that the defendant has a clear ***material issue of fact; a genuine issue to preclude summary judgment.***

The court erred in ordering the coin returned to the defendant in the order granting summary judgment to the plaintiff, May 11, 2005. The court attributes no worth to the coin, hence, had the defendant placed 5,000 gold coins into the account of the United States, they too would have been returned. It follows that the number of coins in the

matter of lawful tender is irrelevant The court erred in making a determination that the coin was valueless as lawful tender in payment of debts/obligations and liabilities. This err [sic] violates the defendant's substantive rights to tender the commodity, in full payment, yet, ***not once in any response expressed or verbal by the plaintiff did it deny that the lawful tender was not money.*** It is either money or not money. If it is not money, the defendant contends that there is a conflict in substantial evidence that would create a jury question. In addition, if it is money, then why has the court ordered its return and why has not the plaintiff accepted the same?

> "[t]here must be a conflict in substantial evidence to create a jury question 411 F.2d at 375. Substantial evidence is "evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions." *Id.* at 374; see also *Krystek v. University of Southern Mississippi,* 164 F.3d 251, 255 (5th Cir. 1999).

The court states within its "ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT" page 2 lines 17-19, "At the hearing on this motion held on September 1, 2004, Rowen admitted that he has not made any payments toward his tax liability for these years, other than lodging this coin with the Court." The defendant objects to the courts interpretation by use of this language to describe the intent of the defendant concerning his payment. The defendant admits that he has made payment in full by lawful tender and no other payments are required when the claim has been satisfied.

Dated: May 22, 2005

Citizen: Robert Rowen

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Citizen Robert J. Rowen,
Defendant/Bailor,
And
UNITED STATES OF AMERICA,
Plaintiff.

Case No.: 03-109 CIV

Remittance in Lawful coin of the realm of the Lawful United States of America for Bailment under seal by an officer of this state and forwarded under registered mailing by an officer of this state into the United States Postal Service for delivery in the accounts of the Northern District Court of California.

This remittance of bailment implies no admission of jurisdiction, guilt, nor plea by the Defendant/Bailor

Points and Authorities

Declaration of Notary Public for the State of California

It appearing that this court lacks Lawful jurisdiction over the Defendant/Petitioner, Citizen Robert Rowen, and it continues to move in violation of the Law of the Land, disrespecting God, Country, and Oath, the Defendant/Bailor moves without this foreign court under his Common Law Right, and with remittance tenders coin of the realm of the Lawful United States of America, into this foreign de facto court's accounts. This court, which is established as an agency under the executive agency known as the President of the United States, has neither authority from

the Judicial nor Legislative Branch of the Constitutionally prescribed government under the Constitution of the United States of America.

There being neither Lawful Courts of the Judicial Branch of the United States of America, nor Lawful Officers under the Executive Branch of the United States of America as prescribed and authorized by the Federal Constitution, the Defendant/Bailor, Citizen Robert J. Rowen, proceeds from the Common Law of the Land, and remits payment in tender of the Lawful money into the accounts of the quasi-Admiralty court, which shall in proof thereof satisfy all Lawful debts owed, or in the alternative by a refusal from this court clearly and irrefutable evidence that a foreign and unconstitutional court to that of the Lawful United States of America moves against the Defendant/Bailor upon the Land, and against the Lawful United States.

Commencing at line sixteen of this page is placed and secured a Lawful gold coin of the Lawful United States of America dated pre-1933, which weight is five dollars. Beneath the coin is its obverse and reverse impression in graphite for all other copies of this instrument, authenticating the original coin and its placement in bailment to this original document.

[Pictures Of Coins Omitted In Printing]

I, Citizen Robert J. Rowen, have secured and placed the above coin for bailment upon and securely onto this instrument and into this court's files under the account number 03-109 CIV, by the hand and seal of an officer of this state, a notary public. By the placement of the coin I

have neither granted jurisdiction, plead, nor admitted to guilt in this matter, but continue to defend from within the Lawful jurisdiction of the People of California, under the common right to pay all Lawful debts in the coin of the realm of the Lawful United States of America. It is repulsive and repugnant to the Constitution of the United States for any action to proceed in an agency Court of the United States if that action prohibits the payment of debt in lieu of the discharge of a debt.

Dated this 30th day of January, 2004

/s/ Robert Rowen
Citizen Robert J. Rowen
Hebrew Christian Man
in Self-Defense

Points and Authorities

IT IS A LAWFUL ACT BY THE DEFENDANT/BAILOR, Citizen Robert J. Rowen, TO DEPOSIT FOR PAYMENT, AND NOT FOR DISCHARGE, INTO THE CIVIL ACCOUNTS OF THIS DISTRICT COURT, THE COINED MONEY OF THE LAWFUL UNITED STATES OF AMERICA FOR ANY ALLEGED DEBT FROM CONTRACT, EITHER EXPRESSED OR IMPLIED,

Citizen Robert J. Rowen, being the Lawful Bailor[1] in this matter, moves under the Doctrine of Depositum[2] and delivers five dollars weight of Lawful coin of the United

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[1] **Bailor** – The party who bails or delivers goods to another, in the contract of bailment. McGee v. French, 49 S.C. 454, 27 S.E. 487; Story, Bailm. §§ 74, 388.

[2] **Depositum**, or a naked bailment of goods, to be kept for the use of the bailor, 2 Ld. Raym. 909

States of America into the foreign accounts of the United States District Court for the Northern District of California, account number 03-109 CIV, for safekeeping by the Clerk of the Court/Bailiff[3]. By the operation under the Law of the Land, Citizen Rowen not only surrenders the Lawful money of the United States of America for deposit[4] and safekeeping into the foreign District Court's civil accounts, but also tenders the same for any Lawful debt owing against the account 03-109 CIV, and hence moves on the Law side of the Courts of the United States of America, raising the Lawful jurisdiction, as is his right as a Solvent.

The Defendant/Bailor continues his claim on being without the quasi commerce jurisdiction of this quasi Admiralty Court, which is administrative, and not judicial, however, he implements a notary public[5] from that commerce jurisdiction to certify that the Lawful coin has been authenticated and secured to this document and then sealed in an envelope and sent by Registered mailing to this court by that same Notary Public for filing into the record. To further evidence the authenticity of the coin, a photo rendering of the coin and the page of this document that secures it is preserved into evidence.

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[3] **Bailiff** – One to whom some authority, care, guardianship, or jurisdiction is delivered, committed, or intrusted; A court attendant, 1 Pl.Comm. 344.

[4] **Deposit** – to lodge for safekeeping or as a pledge, to intrust to the care of another. White v. Greenlee, 330 Mo. 135, 49 S.W.2d 132, 134.

[5] **Notary Public** – A public officer whose function it is to attest and certify. Kip v. People's Bank & Trust Co., 110 N.J.L. 178, 164 A. 253, 254.

The Defendant/Bailor sends by remittance[6] the specie of Lawful Money of accounts of the United States of America, for the payment and not discharge of any lawful debt proven against your Solvent.

Gold and Silver coins of the United States are legal tender for all debts, the charges, taxes, and dues. (Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 980; Pub.L. 97-452, § 1(19), Jan. q12, 1983, 96 Stat. 2477.) The refusal of the Plaintiff to accept the tender in gold for all lawful debts allegedly owed by the Defendant/Bailor places the Plaintiff/Bailee in default.

Tender – "The offer of performance itself, not performance itself, and, when unjustifiably refused, places other party in default and permits party making tender to exercise remedies . . . " ***Walker v. Houston***, 215 Cal. 742, 12 P.2d 952, 953, 87 A.L.R. 937

Dated this 30th day of January, 2004

/s/ Robert Rowen
Citizen Robert J. Rowen
Hebrew Christian Man
in Self-Defense

Declaration of Patricia B. Murray
a Notary Public for the State of California

I, Patricia B. Murray, a Notary Public of the State of California declare that I have authenticated that secured to the attached document is a pre-1933 Lawful coin of the Lawful United States of America. I further declare that I

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[6] **Remittance** – Money sent by one person to another, either in specie, bill of exchange, check or otherwise. Black's Law Dictionary, Revised Fourth Edition

have taken the document with the gold coin, together with this declaration and have place the same into an envelope under the Register mailing from the United States Postal Service designated to the below address. I declare under penalty under the laws of the United States that I have sent this instrument with the secured gold coin to:

The United States District Court
For the Northern District of California
Clerk's Office, 16th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

Patricia B. Murray
[Typed or Printed Name of Notary]

STATE OF CALIFORNIA

COUNTY OF SONOMA}

On February 2, 2004

I, Patricia B. Murray, personally carried and posted this Declaration and attached Remittance by Registered mailing into the United States Postal Service for the Defendant, Citizen Robert J. Rowan.

WITNESS my hand and official seal,

/s/ Patricia B. Murray

NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

PATRICIA B. MURRAY
Commission #1254381
[SEAL] Notary Public-California
Sonoma County
My Comm. Expires Mar 3, 2004

Remittance for Bailment

CERTIFICATE OF SERVICE

I declare under penalty of perjury that a true and correct copy of the foregoing "Remittance in Lawful coin of the realm of the Lawful United States of America for Bailment under seal by an officer of this state and forwarded under registered mailing by an officer of this state into the United States Postal Service for delivery in the accounts of the Northern District court of California" were sent to the following parties on February 2, 2004, first class postage prepaid.

TIMOTHY BURGES
United States Attorney
Room C-253, Federal Building and
United States Courthouse
222 West Seventh Avenue, #9
Anchorage, Alaska 99513-7567

KEITH S. BLAIR
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683

/s/ Terri Su
Terri Su

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA & INTERNAL REVENUE SERVICE. Plaintiff, vs. Citizen, Robert J. Rowen, Defendant.	Case No. CO3-03614 JSW ANSWER, AFFIRMATIVE DEFENSES AND SPECIFIC NEGATIVE AVERMENTS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT Exhibits A-I Oral Argument Demanded FRCP Rule 8(c) § 1:166; 1:167, 1:171 1:161, Rule 9(a), Rule 12(b)(1), 12(b)(6), 12(d) and Rule 17(b)

Comes now Defendant Citizen Robert J. Rowen, demanding oral argument on the following affirmative defenses and specific negative averments in the instant matter before this court.

Dated: August 6, 2004

/s/ Robert Rowen
Citizen Robert J. Rowen
Hebrew-Christian Man in
Self-Defense

Fifth Affirmative Defense – FRCP 8(c) § 1:171 and 12(b)6 Payment in Specie Tendered for full Payment of Debt not Refused by plaintiff; Defendant Motions to Dismiss under Rule 12(b)6 Payment Accepted

The Defendant alleges that there being no express form of payment of debt within Titles 26 and 28, he affirmatively

alleges that the debt on which plaintiff brings in this action has been paid in full in specie on February 5, 2004 by placing within the register of the clerk of the court Lawful money in payment thereof. The Defendant Motions for Dismissal under FRCP Rule 8(c) § 1:171 tendered payment being accepted in accordance with Law without objection by the plaintiff, and Rule 12(b)6 failure to state a claim on which relief may be granted.

In accordance with courts of law, the offer of tender was accepted into the register of the clerk of the court, for payments of all debts. The tender was formally and legally made. The plaintiff received notice of the tender in specie, the offer was sincere by the Defendant, and the plaintiff did not refuse, thereby the sum of the offer was deem sufficient by the Defendant. Further, the court to date has not determined the tender insufficient The Defendant has relied upon the doctrine of Acquiescence, there being sufficient time for the plaintiff to have refused the formal and legal tender.

Follows is Alfred Conkling on discussion of the same issue:

> **[See Exhibit "E" Admiralty Jurisdiction, Law and Practice – Alfred Conkling]**
>
> "In the admiralty, as in courts of law, the defendant is permitted, for the purpose of shielding himself against the imposition of costs, to tender payment or amends. This practice is very common in England, particularly in cases of salvage.
>
> I infer that it is not held to be necessary, in the English admiralty, to produce the money tendered, or **to offer to pay in coin**, unless the tender is refused for want of a compliance with

these conditions, and provided it distinctly appears that the offer was sincere, and that the party making it possessed the present ability to pay the sum tendered; but the offer must be distinct, definite and unequivocal. In a case of salvage, where there had been a mere verbal offer to pay £50, not followed by any formal tender in acts of court, and where it was left doubtful whether the tender was intended to embrace the expenses as well as the services of the salvors, Lord Stowell decided, upon argument and full consideration, that the tender was not **"formally and legally made,"** and that the salvor were therefor entitled to their costs, although he held the **sum offered to be sufficient**. "I see," he observed, "enough of the inconvenience of proceeding in this loose manner, to make it necessary for me to require, in future, as an universal rule of court, that ***a tender should be made, in the first stage of the proceeding, in a regular form. The court will then consider its sufficiency***; and if it shall be pronounced sufficient, the court will make the party who refuses such an offer liable not only to his own costs, but also to those of the other party, if it shall appear that proceedings have been vexatiously pursued.[5]

What is said above of the minor degree of strictness, with respect to a tender, required in a suit in the admiralty, compared with that which is exacted in a suit at common law, is in accordance with the practice of the District Court for the District of Massachusetts, as stated by Mr. Dunlap. And he adds, that ***"It has often been held in that court, that where a tender has***

[5] The Vrouw Margaretha, 4 Robinson's Adm. R., 103

been made in current bank bills, or a check on a bank, drawn by a merchant of established credit, it was a good tender unless specially objected to; and where this kind of tender is specially objected to, the party tendering is considered to be entitled to a reasonable time to procure coin, where coin is specially required[6]"

But it may be safely stated that when a tender is made and rejected before suit brought, the sum tendered ought to be paid into court without unnecessary loss of time after the commencement of the suit, and the tender insisted upon by the defendant in his answer, in discharge of his further liability. The deposit of the money ought to be noted by the clerk in his register, among the proceedings in the cause, and a receipt for it given by him to the party by whom it is made. If made after suit brought, it must be accompanied by a distinct offer to pay the costs of the libellant which have already accrued, and the money must be deposited in court as above directed. In the District Court for the Southern District of New-York, the practice in this respect is regulated by express rules as follows:

> "A tender *inter partes* shall be of no avail on defence [not typo] or in discharge of costs, unless on suit brought, and before answer, plea or claim filed, the same tender is deposited in court to abide the order or decree to be made in the matter."

* * *

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[6] Dunlap's Adm. Practice, 103, 104.

Tenth Affirmative Defense – Civil Actions commenced under the violation of the Internal Revenue Codes are in fact commenced upon a "wharehouse [sic] receipt" within the possession of the Federal Reserve System. The civil actions are proceeded upon the mere maritime hypothecation. Defendant Motions to Dismiss FRCP 12(b)(c), and Rule 8(c) § 1.166. Fraud

The plaintiff and court have continually committed fraud against the Defendant. The Defendant clearly has proven this court is an Admiralty court. In good faith reliance, the Defendant believed the court in his criminal case, concerning the subject in this matter, that the court was not in the Admiralty jurisdiction. The Defendant, in addition, believed this court that it was not an Admiralty jurisdiction. [***See* Exhibit "G" copy of Transcript**]," The Alaska United States District Court stated: " . . . this is a court of law. Courts try to do equity. This is not an admiralty proceeding. It's a criminal law proceeding." The Defendant's Motion the court to dismiss pursuant to FRCP Rule 12(b)(6), and Rule 8(c)§ 1:166.

The jurisdiction of the courts of the colonies was Admiralty law. After the Revolution the existing maritime law became the law of the United States subject to the power in Congress to modify or supplement it as experience or changing conditions might require. United States are Admiralty. This 'court' moves under the revenue laws under the color of the Admiralty Flag. The plaintiff continues the deceit and fraud in the continuance of moving against the Defendant under the Admiralty. All Admiralty collection on the soil of the united [sic] States of America is by mere maritime hypothecation in violation of the Laws of the Constitution.

. . . ***maritime legislation generally.***[16] The Constitution, however, is a document which must be construed as a whole and it has always been interpreted[17] as investing the paramount legislative power in the Congress whether such power was sought to be derived from one or other of the express powers above mentioned, or as a necessary concomittant of and inherent in the grant of the judicial power.

> "Commentators took that view, Congress acted on it, and the Courts including this Court [the Supreme Court] gave effect to it. Practically, therefore, the situation is as if that view were written into the provision."[18] This interpretation was reiterated by the Supreme Court in ***Romero v. International Terminal Operating Co.***[19] in these words:
>
> > "Article III, Section 2, cl. 1 (3d provision) of the Constitution and section 9 of the Act of September 24, 1789, have from the beginning been the sources of jurisdiction in litigation based upon federal maritime law. ***Article III impliedly contained three***

---

[16] ***Southern Pacific Co. v. Jensen,*** 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917), is perhaps the only case which relies solely on the combination of the granting of judicial power and the eighteenth power of Article I, section 8 as general authority to legislate in respect of maritime law.

[17] Detroit Trust Co. v. Steamer Thomas Barlum, 293 U.S. 21, 55 S. Ct. 31, 79 L. Ed. 176 (1934); Panama Railroad Co. v. Andrew Johnson, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 718, 1924 A.M.C. 554 (1924).

[18] *Panama Railroad Co. v. Andrew Johnson,* N. 7, supra.

[19] *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368, 1939 A.M.C. 832 (1959)

> ***grants. (1) It empowered Congress to confer admiralty and maritime jurisdiction on the 'Tribunals inferior to the Supreme Court' which were authorized by Art. I., Section 8, cl. 9. (2) It empowered the federal courts in their exercise of the admiralty and maritime jurisdiction which had been conferred on them, to draw on the substantive law 'inherent in the admiralty and maritime jurisdiction,' Crowell v. Benson***, 285 U.S. 22, 55, 52 S.Ct. 285, 76 L.Ed. 598 (1956), ***and to continue the development of this law within constitutional limits. (3) It empowered Congress to revise and supplement the maritime law within the limits of the Constitution. See Crowell v. Benson***, supra, at 55.

As evidence from the above quote, the only jurisdiction of the Supreme Court is Admiralty and maritime.

"Section 9 of the First Judiciary Act granted the District Courts maritime jurisdiction. This jurisdiction has remained unchanged in substance to the present day."

When the Constitution was adopted, ***the existing maritime law became the law of the United States subject to the power in Congress to modify or supplement it as experience or changing conditions might require.*** [***See*** **Exhibit "H"** ***Alfred Conkling confirmation that all courts in the colony with Admiralty/Maritime, and at the close of the Revolution the Admiralty and Maritime became the law of the United States.***] Congress thus has the paramount and undisputed power to fix, determine, alter and revise the maritime law which shall prevail throughout the

country; and federal statutes, if constitutional, are paramount to any judicially fashioned rules of admiralty.

Note: Congress Limitation refers to the Admiralty, and not the substantive law:

> ***"The limitation refers to Congress' power to alter admiralty jurisdiction, not to the substantive law. Lucas v. "Brinkness" Schiffahrts*** (Jes. Franz Lange, 387 F. Supp. 440, 1975 A.M.C. 1684 (ED. Pa. 1974), appeal dismissed, (3d Cir. April 30, 1975), cert. denied, 423 U.S. 866 (1975).

Concerning Admiralty and Revenue are the following cases:

> They are United States v. $3,976.62 in Currency, One 1960 Ford Station Wagon Serial No. 0C66W145329 347, Federal Rules Decisions 564. Head note #1 states "Although, presumably for purposes of obtaining jurisdiction for forfeiture under Internal Revenue Laws is commenced as proceeding in admiralty, after jurisdiction is obtained proceeding takes on character of civil action at law, and at least at such stage of proceedings, Rules of Civil Procedure control, 26 U.S.C.A. (I.R.C. 1954) § 7323 (a); 40 U.S.C.A. § 304i; Fed. Rules Civ. Proc. Rules 55 and (c), 60 and (b), 81(a)(2), 28 U.S.C.A. Admiralty Rules 2, 10, 21, 28 U.S.C.A.; 28 U.S.C.A. § 1355"

And this case,

> United States of America v ONE 1966 CHEVROLET PICKUP TRUCK et al. Civ. A. No. 526 cited at 56 Federal Rules Decision 459 where in they state the controlling laws are, 26 U.S.C.A.

(I.R.C. 1954) §§ 7325 (3); Supplemental Rules for Certain Admiralty and Maritime Claims, Rules A, C (4,6), 28 U.S.C.A.; Federal Rules Civ. Proc. Rule 60 (b) (1,2) Fed. Rules, Civ. Proc. Rules 55 (b), (1,2), 60, 28 U.S.C.A.

Title 28 is totally based on Admiralty and is the admiralty law Title for the Congress to operate under their 1789 Judiciary Act and the process is Civil, when you are hit with a "Revenue crime".

> An information in rem for forfeiture of property for ***violation of the internal revenue law is a civil and not a criminal proceeding.***
>
> ***Lilienthal's Tobacco v. U.S.***, U.S.N.Y. 1877, 97 U.S. 237, 7 Otto 237, 24 L. Ed. 901
>
> Proceeding to enforce forfeiture is a civil one and not a criminal proceeding. ***U. S. v. $5,372.85 U. S. Coin and Currency***, S.D.N.Y. 1968, 283 F.Supp. 904
>
> Internal revenue forfeiture cases are governed by the Federal Rules of Civil Procedure, 28 U.S.C.A. Cliff v. U.S., C.A.5 (La.) 1965, 350 F.2d 308

Of a number of although, presumably for purpose of obtaining jurisdiction, action for forfeiture under ***Internal Revenue Laws is commenced as proceeding in admiralty,*** after jurisdiction is obtained proceeding takes on character of civil action at law, and at least at such stage of proceedings, Federal Rules of Civil Procedure, 28 U.S.C.A., control. U. S. V $3,976.62 IN Currency, S.D.N.Y. 1965, 37 F.R.D. 564

Notwithstanding the above, a case in admiralty does not arise under the Constitution or Laws of the United States.

> ***American Ins. Co. v Canter,*** 1 Pet. 511, 545 (1828). "A case in admiralty does not, in fact, arise under the Constitution or Laws of the United States."

Title 26, U.S.C. are the Revenue laws. Admiralty commences all actions for infractions of the Revenue law. The Revenue are based upon the taxation of commercial ventures on the high seas, in navigable waters, and on.

> **Prize cases, forfeitures, etc.** – From the earliest days of the Republic, the federal courts sitting in admiralty had been held to have exclusive jurisdiction of prize cases. ***Jennings v. Carson,*** 4 Cr. 2 (1807) ***Taylor v. Carryl,*** 20 How. 583 (1858). Also, in contrast to other phases of admiralty jurisdiction, prize law as applied by the British courts continued to provide the basis of American law so far as practicable, ***Thirty Hogsheads of Sugar v. Boyle,*** 9 Cr. 191 (1815); ***The Siren,*** 13 Wall. 389, 393 (1871), and so far as it was not modified by subsequent legislation, treaties, or executive proclamations. Finally, admiralty and maritime jurisdiction comprises the seizure and forfeiture of vessels engaged in activities in violation of the laws of nations or municipal law, such as illicit trade, ***Hudson v. Guestier,*** 4 Cr. 293 (1808), **infraction of revenue laws,** ***The Vengeance,*** 3 Dall. 297 (1796; ***Church v Hubbart***, 2 Cr. 187 (1804: ***The Schooner Sally,*** 2 Cr. 406 (1805), and the like.

The full scope and meaning of Article III, Section 2, was addressed by Justice Story in the case of De Lovio v. Boit in 1815:

> What is the true interpretation of the clause – all cases of Admiralty and Maritime jurisdiction?" If we examine the etymology, or received use of the words "Admiralty" and "Maritime jurisdiction," we shall find, that they include jurisdiction of all things done upon and relating to the sea, or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea.

Justice Story said in the DeLovio case that the ***jurisdiction of Admiralty,*** as to contracts, ***depends upon the subject matter and the nature of the cause!*** In a book entitled "*The Law of Bills, Notes, and Cheques*", Melville M. Bigalow, Ph. D. Harvard, said in the year 1900: "We are concerned in this book with a branch which deals with the law of bills, notes and cheques. This branch of the law merchant has retained throughout its life, to the present day, its essential characteristics, clearly marking it off from the Common Law . . . The term Law Merchant at the present time usually suggests the law of bills, notes and cheques. The time came when it must take its place, even if piecemeal by the side of the Common Law, and of Admiralty and Equity, in the jurisprudence of England. Admiralty had already been exercising jurisdiction over instruments in the nature of bills of exchange and promissory notes pertaining to contracts in the commerce of the high seas. The Law Merchant is not even a modification of the Common Law; it occupies a field over which the Common Law does not and never did extend."

The Revenue laws are admiralty. The collections are based upon mere maritime hypothecation, that the one who allegedly owns the property does not know there is a maritime lien upon it.

Title 12, § 348:

> Sec. 348. – **Discount of obligations given for agricultural purposes or based upon livestock; *collateral security for Federal reserve notes***
>
> Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may, subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, discount notes, drafts, and bills of exchange issued or drawn for an agricultural purpose, or based upon livestock, and having a maturity, at the time of discount, exclusive of days of grace, not exceeding nine months, and such notes, drafts, and bills of exchange may be offered as collateral security for the issuance of Federal reserve notes under the provisions of section 16 of this Act: Provided, That notes, drafts, and bills of exchange with maturities in excess of six months shall not be eligible as a basis for the issuance of Federal reserve notes unless secured by ***warehouse receipts*** or other such negotiable documents conveying or securing title to readily marketable staple agricultural products or by chattel mortgage upon livestock which is being fattened for market

Note the mere maritime hypothecation using the "warehouse receipts" as collateral in the above.

> Warehouse Receipt – A receipt given by a warehouseman for goods received by him on storage in his warehouse. Merchants' Warehouse Co. v. McClain, C.C.Pa., 112 F. 789
>
> Warehouse Receipt – It is evidence of title to goods thereby represented. Woldson v. Davenport Mill & Elevator Co., 169 Wash. 298, 13 P.2d 478, 480

This is how the Federal Reserve System places their maritime lien on all properties of the people under the jurisdiction of the United States. The United States makes the request for the Federal Reserve Notes, and said it needs the notes for whatever. That whatever then get a mere maritime hypothecation by the Federal Reserve System, In addition, the American people have no clue that their properties have hidden liens.

> **Maritime Hypothecation** – maritime hypothecation had their origin in the necessities of commerce, and are said to be the creatures of necessity and distress. They are of high and privileged character, and are held in great sanctitude by maritime courts. Such contracts are intended for the purpose of procuring the necessary supplies for ships, which may be in distress in foreign ports where the master and owner are without credit. Black's Law Dictionary revised 4th Ed.
>
> As hypothecation, under the maritime law, is equivalent to an assignment as security under the municipal law. Freights o0f [sic] the Kate, 63 F. 707, 714
>
> "Hypothecation," as the term is used in maritime law, is frequently used to designate a bottomry mortgage of the vessel made by the master in

case of necessity, and without any personal responsibility. Cole v. White 26 Wend. 511, 516

The instance of a violation of the revenue laws, or what is deemed an infraction, the following Federal Rules of Civil Procedure are implemented:

XIII. SUPPLEMENTAL RULES FOR ***CERTAIN ADMIRALTY AND MARITIME CLAIMS***

C. Actions in Rem: Special Provisions

NOTES TO RULE C

The main concern of Admiralty Rules 13-18 was with the question whether certain actions might be brought in rem or also, or in the alternative, in personam. Essentially, therefore, these rules deal with questions of substantive law, for in general an action in rem may be brought to enforce any maritime lien, and no action in personam may be brought when the substantive law imposes no personal liability. These rules may be summarized as follows:

1. Cases in which the plaintiff may proceed in rem and/or in personam:

* * *

e. **Suits founded on mere maritime hypothecation;**

* * *

Pages 1 – 13

United States District Court
Northern District Of California
Before The Honorable Jeffrey S. White, Judge

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. C03-3614 JSW
	)	
Robert J. Rowan,	)	
	)	
Defendant.	)	

San Francisco, California
Friday, September 3, 2004

* * *

[4] "The plaintiff has admitted to my special negative averments according to Rule 8(d), which is entitled 'Failure to [5] Deny,' and which reads, quote, 'Averments in a pleading to which a responsive pleading is required are admitted but not denied in the responsive pleading,' " end quote.

Additionally, plaintiff has acquiesced to my affirmative defenses, and plaintiff has acquiesced to the several motions for dismissal in my pleadings.

Your Honor, with the Court's permission, I move for immediate dismissal.

THE COURT: All right, well, that request will be denied in terms of immediate dismissal. And I don't think I need to hear from the Government, I have Mr. Rowan's response.

* * *

[8] ***THE COURT:*** Does the Government have any position on the value?

MR. MOORE: I don't remember exactly what it was because I've never seen it. It's $20 face value of the coin itself.

* * *

[10] ***MR. ROWAN:*** Yes, Your Honor. I would like to restate my position that according to Rule 8(d), the plaintiff has acquiesced to all of my special negative averments and affirmative defenses.

THE COURT: I guess I should hear your position on that. Mr. Rowan, presumably, is contending that, presumably having failed to reply, that the Government has somehow admitted to the truth of Mr. Rowan's affirmative defenses; what is the Government's position on that?

* * *

THE MINT ACT (COINAGE ACT) OF 1792

An Act establishing a Mint, and regulating the Coins of the United States

Sec. 9 . . . That there shall be from time to time struck and coined at the said mint, coins of gold, . . . Half Eagles – each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six eights of a grain of pure, or one hundred and thirty-five grains of standard gold. . . .

* * *

Sec. 11. *And be it further enacted*, That the proportional value of gold to silver in all coins which shall by law be current as money within the United States . . .

* * *

Sec. 16. *And be it further enacted*, That all the gold and silver coins which shall have been struck at, and issued from the said mint, shall be a lawful tender in all payments whatsoever . . .

Sec. 20 . . . That the money of account of the United States shall be expressed in dollars . . . and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

APPROVED, April 2, 1792

APPEAL, CLOSED

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:03-cv-03614
Internal Use Only

United States of America
v. Rowen
Assigned to: Hon. Jeffrey S. White
Cause: 26:7401 IRS: Tax Liability

Date Filed: 08/04/2003
Jury Demand: None
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America

represented by
Timothy M. Burgess
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22 W. 7th Avenue
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907-271-5071
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Keith S. Blair
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P.O. Box 683
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Washington, DC 20044-0683
202-307-0977
Fax: 202-307-0054
ATTORNEY TO BE NOTICED

V.

Defendant

Robert J. Rowen

represented by
Robert J. Rowen
PRO SE

Date Filed	#	Docket Text
08/04/2003	•1	Case transferred in from District of Alaska Case Number A03-0109-cv. Filed by United States of America. (vlh,) (Entered: 08/05/2003)
08/07/2003	•2	INITIAL SCHEDULING CONFERENCE ORDER: Case Management Conference set for 11/7/2003 at 01:30 PM. Signed by Judge Jeffrey S. White on 8/7/2003. (vlh,) (Entered: 8/08/2003)
08/20/2003	•3	CERTIFICATE/PROOF OF SERVICE by United States of America re [2] (vlh,) (Entered: 08/21/2003)
08/21/2003	•5	Minute ORDER Denying District of Alaska's Docket #12, Defendant's Request for Finding of Facts and Conclusions of Law (vlh,) (Entered: 08/22/2003)
08/21/2003	•4	REQUEST *For Findings of Fact and Conclusions of Law* by pro se Robert J. Rowen. (vlh,) (Entered: 08/22/2003)
10/29/2003	•6	CLERK'S NOTICE Case Management Conference set for 12/5/2003 at 01:30 PM. Case Management Statement due by 11/26/2003. (vlh, COURT STAFF) (Entered: 10/30/2003)
10/29/2003	•7	CASE MANAGEMENT STATEMENT filed by United States of America. (vlh, COURT STAFF) (Entered: 10/30/2003)
11/10/2003	•8	REQUEST *For Writ of Prohibition* by pro se Robert J. Rowen. (vlh, COURT STAFF) (Entered: 11/13/2003)

12/09/2003 •9 Minute Entry: Initial Case Manage Conference held on 12/5/2003 before Jeffrey S. White (Date Filed: 12/9/2003). (Court Reporter Jeanne Bishop.) (vlh, COURT STAFF) (Date Filed: 12/9/2003) (Entered: 12/10/2003)

01/06/2004 •10 ORDER TO SHOW CAUSE Order to Show Cause Hearing set for 2/13/2004 01:30 PM. Show Cause Response due by 1/23/2004. Signed by Judge Jeffrey S. White on 1/06/2004. (vlh, COURT STAFF) (Filed on 1/06/2004) (Entered: 01/07/2004)

01/12/2004 •11 MOTION For Summary Judgment filed by United States of America. Motion Hearing set for 2/27/2004 09:00 AM (vlh, COURT STAFF) (Filed on 1/12/2004) Modified on 2/5/2004 (vlh, COURT STAFF). (Entered: 01/13/2004)

01/12/2004 •12 Declaration of Louis A. Panelli in support of [11] Motion for Summary Judgment filed by United States of America. (Related document(s)[11]) (vlh, COURT STAFF) (Filed on 1/12/2004) (Entered: 01/13/2004

01/12/2004 •13 Declaration of Keith S. Blair in support of [11] Motion for Summary Judgment filed by United States of America. (Related document(s)[11]) (vlh, COURT STAFF) (Filed on 1/12/2004) (Entered: 01/13/2004)

01/20/2004 •14 Renotice motion hearing on Motion for Summary Judgment filed by United States of America. Motion Hearing set for 5/21/2004 09:00 A.M. (vlh, COURT STAFF) (Filed on 1/20/2004) (Entered: 01/21/2004)

01/21/2004 •15 USCA Order: The petition for writ of mandamus is denied (vlh, COURT STAFF) (Filed on 1/21/2004) (Entered: 01/28/2004)

02/04/2004 •16 MOTION for Entry of Default filed by United States of America. (vlh, COURT STAFF) (Filed on 2/4/2004) (Entered: 02/05/2004)

02/05/2004 •17 NOTICE of Remittance . . . by Robert J. Rowen (vlh, COURT STAFF) (Filed on 2/5/2004) (Entered: 02/06/2004)

02/06/2004 • Clerk's Notice ENTRY OF DEFAULT as to Defendant (vlh, COURT STAFF) (Filed on 2/6/2004) (Entered: 02/06/2004)

02/17/2004 •18 Minute Entry: Show Cause Hearing (Date Filed: 2/17/2004). Hearing on Motion for Default Judgment shall be heard on 5/21/04 at 9:00 AM (Court Reporter Jim Yeomans.) (vlh, COURT STAFF) (Date Filed: 2/17/2004) (Entered: 02/17/2004)

03/08/2004 •19 NOTICE Citizen Rowen's Claims Supremacy of Law by Robert J. Rowen (vlh, COURT STAFF) (Filed on 3/8/2004) (Entered: 03/08/2004)

03/16/2004 •20 AMENDED NOTICE of Supremacy of Law . . . by Robert J. Rowen (vlh, COURT STAFF) (Filed on 3/16/2004) (Entered: 03/17/2004)

05/04/2004 •21 ORDER Setting Aside Default; Setting Briefing Schedule for Plaintiff's Motion for Summary Judgment; Notifying Defendant of Obligation to File Opposition Brief. Defendant shall file and serve an opposition to motion for summary judgment no later than 6/4/2004.

		The hearing originally set for 5/21/2004 is vacated and reset for 7/9/2004 09:00 AM. Signed by Judge Jeffrey S. White on 5/4/2004. (vlk, COURT STAFF) (Filed on 5/4/2004) (Entered: 05/05/2004)
06/03/2004	•22	MOTION for Extension of Time to File Response/Reply as to [11] Motion for Summary Judgment filed by Robert J. Rowen. (vlk, COURT STAFF) (Filed on 6/3/2004) (Entered: 06/04/2004)
06/03/2004	•	Proposed Order re [22] by Robert J. Rowen. (vlk, COURT STAFF) (Filed on 6/3/2004) Modified on 6/4/2004 (vlk, COURT STAFF). (Entered: 06/04/2004)
06/03/2004	•23	CERTIFICATE OF SERVICE by Robert J. Rowen re: [22] MOTION for Extension of Time to File Response/Reply as to [11] MOTION for Summary Judgment (vlk, COURT STAFF) (Filed on 6/3/2004) (Entered: 06/04/2004)
06/10/2004	•24	ORDER by Judge Jeffrey S. White granting [22] Motion for Extension of Time to File Response/Reply as to [11] MOTION for Summary Judgment. Response due by 8/6/2004. (vlk, COURT STAFF) (Filed on 6/10/2004) (Entered: 06/14/2004)
08/04/2004		* * * Motions terminated: [11] MOTION for Summary Judgment filed by United States of America. (hdj, COURT STAFF) (Filed on 08/04/2004) (Entered: 08/04/2004)
08/06/2004	•25	ANSWER, Affirmative Defenses and Specific Negative Averments to Plaintiff's Motion for Summary Judgment by Robert J. Rowen. (hdj, COURT STAFF) (Filed on 8/6/2004) (Entered: 08/11/2004)

09/03/2004 •26 Minute Entry: Motion for Summary Judgment/Default Judgment Hearing held on 9/3/2004 before Jeffrey S. White (Date Filed: 9/3/2004). Defendant's request for immediate dismissal: DENIED. (Court Reporter Sahar McVickar). (hdj, COURT STAFF) (Date Filed: 9/3/2004) (Entered: 09/08/2004)

09/15/2004 •27 ORDER Signed by Jeffrey S. White on 9/15/04. The Court HEREBY REQUESTS the United States submit supplemental evidence in support of its Motion for Summary Judgment by 10/5/04. Mr. Rowen should file his response to the United States' supplemental evidence, if any, by October 26, 2004. (hdj, COURT STAFF) (Filed on 9/15/2004) (Entered: 09/16/2004)

10/05/2004 •28 Supplemental MEMORANDUM in Support re: Motion for Summary Judgment filed by United States of America. (Related document(s) [27]) (hdj, COURT STAFF) (Filed on 10/5/2004) (Entered: 10/06/2004)

10/05/2004 •29 Declaration of John Margenau in Support of [28] filed by United States of America. (Related document(s) [28]) (hdj, COURT STAFF) (Filed on 10/5/2004) (Entered: 10/06/2004)

10/05/2004 •30 Declaration of Keith S. Blair in Support of [28] filed by United States of America. (Related document(s) [28]) (hdj, COURT STAFF) (Filed on 10/5/2004) (Entered: 10/06/2004)

10/26/2004 •31 RESPONSE to [28] by Robert J. Rowen. (hdj, COURT STAFF) (Filed on 10/26/2004) (Entered: 10/27/2004)

05/11/2005 •32 ORDER GRANTING Plaintiff's Motion for Summary Judgment. The Clerk of Court is directed to return the "coin of the realm" to Rowen, and to close the file. Signed by Judge Jeffrey S. White on 5/11/05. (hdj, COURT STAFF) (Filed on 5/11/2005) (Entered: 05/13/2005)

05/11/2005 •33 Pursuant to the Court's Order Granting the motion for summary judgment filed by plaintiff United States of America, judgment is hereby entered in favor of the United States and against defendant Robert Rowen ("Rowen") in the amount of $1,124,800.90. This amount reflects Rowen's outstanding tax liabilities, including interest and statutory accruals, as of October 5, 2004. Because the tax assessments continue to accrue interest and penalties until Rowen pays them in full, this judgment does not reflect the total amount Rowen owest to the United States based on his tax liability for the years 1992 through 1997. Signed by Judge Jeffrey S. White on 5/11/05. (hdj, COURT STAFF) (Filed on 5/11/2005) (Entered: 05/13/2005)

05/11/2005 * * * Civil Case Terminated. (hdj, COURT STAFF) (Filed on 5/11/2005) (Entered: 07/19/2005)

05/23/2005 •34 MOTION for Reconsideration filed by Robert J. Rowen (hdj, COURT STAFF) (Filed on 5/23/2005) (Entered: 05/25/2005)

07/15/2005 •35 ORDER by Judge Jeffrey S. White denying [34] Motion for Reconsideration. Granting Plaintiff's Motion for Summary Judgment. (hdj, COURT STAFF) (Filed on 7/15/2005) (Entered: 07/18/2005)

08/02/2005	•36	NOTICE OF APPEAL as to [35] Order on Motion for Reconsideration by Robert J. Rowen. Filing fee $255, receipt number 3375048 (hdj, COURT STAFF) (Filed on 8/2/2005) (Entered: 08/04/2005)
08/02/2005	•	Copy of Notice of Appeal and Docket sheet mailed to all counsel (hdj, COURT STAFF) (Filed on 8/2/2005) (Entered: 08/04/2005)
08/02/2005	•	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (hdj, COURT STAFF) (Filed on 8/2/2005) (Entered: 08/04/2005)